IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

MFA.No. 282 of 1996(Y)

MVOP.1798/1992 of ADDL. DISTRICT COURT-II, MAVELIKKARA
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APPELLANT/CLAIMANT

PADMAKUMAR
ADITHYA, BHAVANAM
KOTTACKAKAM, MAVELIKARA

BY ADV. SRI.K.SASIKUMAR

RESPONDENTS/RESPONDENTS
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*1. KUNJUMON ALIAS SAMUEL
THAIKKOOTTATHIL VEETTIL
MARAMON, THOTTAPUZHASSERIL
KOZHENCHERRY (DELETED)

2. C.M. JONYKUTTY , SAJO VILLA
MATTOM SOUTH, MAVELIKARA-3

3. THE ORIENTAL INSURANCE CO.LTD
REPRESENTED BY BRANCH MANAGER
ALLEPPEY

*4 MOHANAN S/O VASU,
ABHILASH BHAVAN, POTHAPALLY SOUTH,
KUMARAPURAM (DELETED)

5. CHANDRIKAW/O KARUNAKARAN,
ITTIKKUITTIL HOUSE,
MHADEVIKKADU, ALAPPUZHA

6. ORIENTAL INSURANCE CO. LTD
REPRESENTED BY ITS BRANCH MANAGER

(RESPONDENTS 1 &4 DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 25-5-2007 ON I.A NO. 960/2007)

BY ADV. SRI.M.JACOB MURICKAN
SRI.PHILIP M.VARUGHESE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2007 THE COURT ON 18/06/2007 DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR . J.

M.F.A. 282 of 1996

Dated this the 18th day of June 2007

JUDGMENT

The petitioner in O.P (MV) 1798/1992 on the file of the Additional Motor Accidents Claims Tribunal, Mavelikara is the appellant. Appellant has filed this appeal challenging the quantum of compensation awarded to him.

2. Appellant was travelling in a stage carriage bus bearing registration No.KRK 9682 driven by 1st respondent at about 2.30 p.m It collided with a lorry and the appellant sustained injuries. He filed the original petition impleading the owners drivers and insurers of both the vehicles. It was alleged that when the driver of the bus (1st respondent) attempted to overtake another stage carriage bus in a rash or negligent manner and in that process he had to apply break abruptly and the vehicle took a turn to the left side and at that time his hand came into contact with the side of a lorry which was coming from the opposite side. He claimed an amount of Rs. 62,000/- The drivers of the bus and lorry did not appear and contest. The insurer of the bus contended that the accident occurred due to the negligence of the appellant himself. It was contended that there was no collision took place between the vehicles and appellant was sitting negligently putting his right hand out of the bus and hence he sustained injuries. The quantum of compensation was also disputed.

3. The Tribunal found that the accident occurred due to the

negligence of the appellant as well as the driver of the lorry and the appellant had contributed 50% of the accident. It was found that the total compensation due to the appellant is 24,000/- but he was allowed to recover only half of the amount from 3rd respondent. Challenging that award this appeal filed.

4. The learned counsel appearing for the appellant has strenuously argued before me that the finding that the appellant contributed to the accident is illegal. It is also argued that the compensation fixed under various heads are very low and highly inadequate. Admittedly the petitioner was a passenger in the bus. Though the appellant was got a case that the accident occurred while the 1st respondent (driver of the bus) attempted to overtake another bus in a rash or negligent manner, there was no reliable evidence to prove that fact. There is nothing on record to show that the bodies of the bus and lorry come into contact with each other. So the finding of the Tribunal that the petitioner also contributed to the accident is perfectly correct But considering all aspects of the matter I am of the view that instead of 50% the petitioner can be saddled with 20% of the negligence. The driver of the lorry is responsible for the remaining 80%.

5. It is argued that the compensation fixed is highly inadequate. The Tribunal took a view that for the purpose of computing compensation

as Rs.6,000/- can be taken as his average annual income of the appellant after deducting his personal expenses. The appellant was aged 20 on the date of accident, and 20 was taken as the multiplier. Compensation for permanent disability was fixed at Rs. 14,000/-. For loss of earnings he was given Rs. 1,800/- For transportation to hospital Rs.100/- claimed being reasonable was allowed For extra nourishment Rs. 500/- was awarded. A sum of Rs. 2,000/- was awarded as medical expenses. For pain and suffering a sum of Rs. 5,000/- was granted. An amount of Rs.600/- was also granted as bystander's expenses. Thus the total compensation was fixed at Rs. 24,000/- and the petitioner was awarded Rs.12,000/- i.e the 50% of the total compensation. The quantum of compensation awarded is adequate. So I do not find any reason to interfere with the quantum of compensation awarded under various heads. But the appellant is entitled to get 80% of the compensation so fixed which will come to Rs. 19,200/-

6. In the result, the appeal is allowed in part. An award passed in favour of the appellant allowing him to recover another 7,200/- with interest at 7% from the date of filing of the original petition till the date of judgment of this appeal. The insurer is liable to pay that amount also . On deposit the amount the appellant can withdraw the entire amount.

K.PADMANABHAN NAIR, JUDGE

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